IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.562 OF 1989.

Nagarbai Shiva Ligade
res. at Sayyed Warwade
Tal-Mahol,
Dist: Solapur ..Appellants

versus

The State of Maharashtra ..Respondent.

Shri M.R.Deshpande for the Appellant
Dr.F.R.Shaikh, APP for the State

Coram : D.G.Deshpande,
S.R.Sathe, JJ.
Dated : 8th January, 2007

JUDGMENT (PER S.R.SATHE, J.)

1. Appellant, the original accused in Sessions Case No.11 of 1989 has preferred this appeal against the judgment and order passed by the Court of Additional Sessions Judge, Solapur, whereby accused was convicted for the offence punishable under Section 302 of I.P.C. and sentenced to suffer imprisonment for life and to pay fine of Rs.100/- i.d. to suffer R.I. for one month.

2. Brief facts giving rise to this appeal are as under:

. The marriage of deceased Shobha had taken place with Bhimashankar Ligade sometime in

August-September 1986. After marriage she started residing with Bhimashanker at Sayyad Warwade, Taluka Mohol, Dist: Solapur. It is the prosecution case that Shobha was not treated well by her mother in law i.e. the present accused. Two to three days prior to the incident in question there was some quarrel between accused Nagarbai and deceased Shobha on account of some face powder box. The accused had also grievance that the parents of Shobha had not given sufficient clothes and ornaments after her delivery for the newly born child. On that count also accused used to harass Shobha.

3. On the day of incident i.e. on 17.9.1988 when Shobha and her mother in law i.e. accused were only in the house and the father in law of Shobha had taken Shobha's newly born child out of the house, the accused picked up a quarrel with Shobha and poured kerosene on her person and set her on fire. When she raised cry the neighbours came there and they extinguished the fire. By that time the husband of Shobha reached there. Shobha told him that her mother in law i.e. the present accused poured kerosene on her person and set her on fire. Shobha was then immediately removed to Primary

Health Centre. Finding that Shobha had sustained burn injuries the police officer recorded the statement of Shobha wherein she categorically stated that the accused poured kerosene on her person and set her on fire. On the basis of the said statement police registered the crime against the present accused for the offence punishable under Section 307 of I.P.C. Police then sent the requisition to Special Executive Magistrate who also recorded the dying declaration of Shobha. Shobha was then removed to Civil Hospital, Solapur where also her statement was recorded by the Special Executive Magistrate, wherein also she disclosed similar story. Prior to that her statement was also recorded by the police head Constable in the Civil Hospital, Solapur. Unfortunately, on 2.10.1988 Shobha succumbed to the burn injuries sustained by her. The police therefore registered an offence under section 302 of I.P.C. In the meantime police had drawn the panchanama of the place of offence. After Shobha's death they drew the inquest panchanama and sent the dead boy for postmortem. The doctor opined that her death was as a result of Septicaemia due to 58% burn injuries. The police recorded the statement of various witneses and after

completion of investigation submitted chargesheet in the Court of JMFC, Mohol.

4. Finding that the accused is chargesheeted for the offence punishable under Section 302 of I.P.C. which is exclusively triable by the Court of Sessions, the learned JMFC committed the case to Sessions Court, Solapur.

5. The learned Additional Sessions Judge framed charge Exhibit 1 against the accused for the offence mentioned above. The charge was readover and explained to the accused. Accused pleaded not guilty and claimed to be tried. From the suggestions put to the P.W's and from the statement of the accused recorded under Section 313 of Cr.P.C. it appears that the defence of the accused was of total denial.

6. In order to prove the charge levelled against the accused, the prosecution examined as many as 12 witnesses consisting of P.W.1. Ankush Suroshe- panch Exhibit 12, P.W.2. Kerrappa Urvane Exhibit 14, P.W.3 Ismail Sheikh-panch P.W.15, P.W.4 Vimal Kore -Exhibit 16, P.W.5 Kabulla Husseni, the

police patil to whom the information about burning Shobha was given- Exhibit 17, P.W.6 Medical Officer Dyandeo Kadam who examined Shobha at Primary Health Centre, Mohol Exhibit 19, P.W.7 Special Executive Magistrate Nivrutti Bansode -Exhibit 21, P.W.8 Dr.Bhishmachari Kodare- Medical Officer Exhibit 27, P.W.9. Durgadas Paraswar - the Other Special Executive Magistrate, Exhibit 29, P.W.10 Shrimant Gavali - police constable Exhibit 30, P.W.11 Ramchandra Waghmare -Police Head Constable Exhbit 32, P.W.12 Arjunrao Kale -the Investigating Officer Exhibit 34. The prosecution also produced the inquest panchanama Exhibit 8, Panchanama of Place of Offence Exhibit 13, Post Mortem Report Exhibit 9 and four dying declarations at Exhibit 20, 26, 28 and 33. All this evidence will be discussed in detail in further discussion as and when necessary.

7. It is not in dispute that the marriage of deceased Shobha had taken place about two years prior to the incident and out of the said wedlock she had a son born about five months prior to the incident in question. It is an admitted fact that on 17.9.1988 in the morning at about 8 a.m. or so Shobha was taken to primary health centre and there

Dr.Dyandeo Kadam examined her and at that time she had sustained 50% burn injuries. It is also not in dispute that subsequently she was removed to Civil Hospital and ultimately she succumbed to the burn injuries on 2.10.1988. The post-mortem report is produced by the prosecution at Exhibit 9 wherein also the cause of death is shown as Septicaemia due to 50 % burn injuries. So Shobha died as a result of burn injuries is not disputed.

8. The main and the material question is whether the death of Shobha is accidental, suicidal or homicidal. Incidently, it must be noted that it is nowhere even suggested to any of the witneses that Shobha's death is due to accident or that she committed suicide. On the contrary, the evidence on record is certainly sufficient to show that the death of Shobha is homicidal.

9. The next question that falls for consideration is whether the death of Shobha was caused at the hands of the accused. The relationship between Shobha and the accused is not disputed. It is pertinent to note that P.W.5 Hussein, who was the police patil of the said

village at the relevant time has categorically stated that on the day of incident, at about 8.30 a.m. or so the father of the deceased came to him and informed him that Shobha's mother-in-law has burnt her. It must be noted that even the said witness has stated that when he reached to the house of Shobha and made query with her about her burn injuries, she told him that her mother in law poured kerosene on her person and set her on fire. The evidence of this witness is not at all shaken or shattered in the cross examination. A vague suggestion is put to him that he belongs to the political group which is against the accused. However, besides such vague suggestion there is absolutely nothing on record which would indicate that this witness has any animus against the present accused so as to involve her in such type of grave offence. So, the evidence of Police Patil Khabulla Patil can safely be accepted.

10. Apart from the above-mentioned oral dying declaration there are four written dying declarations i.e. Exhibit 20, 26, 28 and 33. All these dying declarations have been recorded on the date of the incident. The earliest one is Exhibit

20 recorded by the police on the basis of which offence was registered initially under Section 307 of I.P.C. This statement is treated as F.I.R. In this, the deceased Shobha has specifically stated that on that day when she was alone in the house, the accused poured kerosene on her person and set her on fire. It is pertinent to note that even in the other three dying declarations Shobha has narrated the same story. There is absolutely no discrepancy in these four written dying declarations.

11. It must be noted that out of the above mentioned four dying declarations two are recorded by the Special Executive Magistrate, first one is at Exhibit 26 wherein also the deceased has clearly named the present accused as the person who set her on fire. Shri Deshpande, learned Advocate for the accused strenuously argued before us that no reliance can be placed on this dying declaration because there is no endorsement of the medical officer to show that at the relevant time the person was in a position to give the statement. Firstly, it must be noted that there is no rule of law that dying declaration can not be accepted unless there

is an endorsement of the doctor that at the relevant time patient was in a position to give statement. Effect of absence of such endorsement will depend on the facts of each case. In the instant case, it must be noted that the Special Executive Magistrate has categorically mentioned in the said statement that at that time he had obtained the opinion of the medical officer and even according to him, at the relevant time the injured was fully conscious and in position to give statement. It must be noted that admittedly, Shobha survived for a period of 13 days thereafter and had sustained 50% burn injuries, so under such circumstances we are not inclined to accept the argument advanced by the learned Advocate for the accused in this behalf and to give any importance to the same, particularly when we find that subsequent to this dying declaration there is another dying declaration which is recorded at Civil Hospital, Solapur and it is at Exhibit 28. The same is also recorded by the Special Executive Magistrate, Durgadas Paraswar. It bears the endorsement of the medical officer Bhismacharya Kodale exhibit 27 wherein it is clearly stated that at the relevant time injured was in position to give statement and she was conscious. The careful

reading of the depositions of six mentioned five witnesses namely Khabulla Hussein, Police Patil Exhibit 17, Medical Officer Dyandeo Kadam Exhibit 19, Special Executive Magistrate Nivrutti Bansode Exhibit 21, Medical Officer Bhishmachari Kodare Exhibit 27, Special Executive Magistrate Durgadas Paraswar Exhibit 29 and police head contable Waghmare Exhbit 32 clearly establishes that deceased Shobha had categorically named the accused as the person who poured kerosene on her person and set her on fire. It is pertinent to note that the first statement was recorded within short time from the incident. At that time there was in fact no opportunity for any one to tutor the injured Shobha. Infact, we find that no specific suggestion is put to the prosecution witnesses that Shobha had given such dying declarations as a result of tutoring. It is pertinent to note that the witnesses Khabulla Hussein, police patil had accompanied Shobha in the jeep when she was taken to the hospital. It is nowhere even suggested to him that at that time the relatives of Shobha tutored her and asked her to name her mother-in-law. We must also bear in mind that Shobha has not at all involved her father-in-law or husband in the instant case. If

really she had any intention to involve the inlaws falsely, she would have even named the father-in-law, but that has not happened.

12. Merely because there are various dying declarations, one can not reject the same particularly when we find that the same are quite cogent and consistent. The dying declarations in question certainly inspire confidence and the same are trustworthy. It is well settled that conviction can be passed even on one single dying declaration if the same is truthful, reliable and trustworthy. The dying declarations in the instant case are rightly believed by the learned trial Judge and as such he has rightly convicted the accused for the offence punishable under Section 302 of I.P.C.

13. The learned Advocate for the accused submitted that the accused is a woman of an advanced age and as such leniency be shown to her. However, having regard to the serious offence, wherein the daughter in law has been set on fire by pouring kerosene on her person we do not think that there is any justifiable reason to show mercy to the accused. Hence, we are not at all inclined to intervene with

the order of conviction and sentence. Hence, we pass the following order.

O R D E R

. The Appeal is dismissed.

. The order of conviction and sentence as passed by the Additional Sessions Judge, Solapur in Sessions Case No.11 of 1989 is confirmed.

. The accused to surrender bail forthwith. If she is not present in the Court today, the trial Court to issue necessary arrest warrant against the accused immediately.

(D.G.Deshpande, J.)

(S.R.Sathe, J.)

pps.